

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

DAVID AGUILAR,

Plaintiff,

v.

J. TAFELMEYER, et al.,

Defendants.

Case No. 3:23-cv-00547-ART-CSD

ORDER

On December 20, 2023, this Court entered its order under 28 U.S.C. § 1915A screening Plaintiff David Aguilar’s pro se civil-rights complaint and allowing his Eighth Amendment excessive-force and medical-indifference claims to proceed. (ECF No. 6). In the screening order, the Court deferred ruling on Aguilar’s application to proceed *in forma pauperis* (“IFP”) and motion for appointment of counsel. (*Id* at 9). Because the Court was inclined to appoint Aguilar counsel for litigation purposes but not for participating in the Court’s Inmate Early Mediation Program, it gave Aguilar until January 19, 2024, to file a written notice stating if he wants to either (1) participate without counsel in the Inmate Early Mediation Program or (2) be referred to the Pro Bono Counsel Program and proceed onto the normal litigation track. (*Id.*)

Aguilar timely filed a notice stating that he wants to be referred to the Pro Bono Counsel Program and proceed onto the normal litigation track. (ECF No. 8). In a motion styled as seeking a show-cause order, Aguilar moves the Court for a temporary restraining order and a preliminary injunction requiring “that he be housed in unit 3 [due] to his ADA status (Glaucoma) in both eyes.” (ECF No. 4). For the reasons stated below, the Court grants Aguilar’s IFP application, grants in part his motion for appointment of counsel, denies his motion for a restraining

1 order and injunction, and refers this action to the Court's Pro Bono Counsel  
2 Program.

3 **I. DISCUSSION**

4 **A. Aguilar's IFP application is granted.**

5 Based on the financial information provided, the Court finds that Aguilar  
6 is unable to prepay the full \$350 filing fee in this action. (See ECF No. 1). The  
7 Court thus grants Aguilar's IFP application and allows him to proceed without  
8 paying an initial installment of the filing fee. But pauper status doesn't relieve  
9 Aguilar of his obligation to pay the full \$350 filing fee under 28 U.S.C.  
10 § 1915(b)(2); it just means that he can do it in installments. And the full \$350  
11 filing fee will remain due and owing even if this case is later dismissed or  
12 otherwise unsuccessful for Aguilar.

13 **B. Aguilar's motion for appointment of counsel is granted in part.**

14 The Court finds that exceptional circumstances warranting the  
15 appointment of counsel exist here. See *Palmer v. Valdez*, 560 F.3d 965, 970 (9th  
16 Cir. 2009) (outlining legal standard). Aguilar states colorable claims for relief that  
17 raise relatively complex legal and factual issues. Moreover, having reviewed  
18 Aguilar's filings in this action, the Court concludes that his ability to litigate his  
19 claims would be greatly enhanced by the assistance of counsel. The Court thus  
20 grants Aguilar's motion for appointment of counsel in part as to only litigation  
21 purposes. The Court will attempt to find Aguilar counsel. The Court will hold a  
22 status conference in approximately 60 days to address the matter of securing  
23 counsel for Aguilar and proceeding with this action. And the Court will enter a  
24 separate order scheduling that conference.

25 **C. Aguilar's motion for pretrial equitable relief is denied.**

26 What remains is Aguilar's motion seeking a temporary restraining order  
27 and a preliminary injunction about his classification and housing status. (ECF  
28 No. 4). The Court denies this motion for several reasons. First, the Court has

1 resolved to grant Aguilar’s motion for appointment of counsel and refer this  
2 matter to the Court’s Pro Bono Counsel Program. If appointed, counsel will be  
3 better able to assess whether pretrial equitable relief is warranted, and file a  
4 proper motion seeking that relief.

5 Second, Aguilar has not demonstrated that he is entitled to a restraining  
6 order or an injunction. Aguilar does not mention, let alone analyze, the legal  
7 standards that govern the “extraordinary” forms of equitable relief sought in his  
8 motion. *See e.g., Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)  
9 (outlining general standard for obtaining a restraining order or preliminary  
10 injunction); *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (outlining  
11 “doubly demanding” standard for obtaining an injunction that goes beyond  
12 simply maintaining the status quo); 18 U.S.C. § 3626(a)(2) (outlining the  
13 “narrowly drawn” standard for obtaining an injunction about prison conditions).

14 Finally, the Court lacks authority to grant the relief that Aguilar seeks  
15 because there is not a sufficient nexus between the issues raised in his motion  
16 and the claims pled in his complaint. *See Pac. Radiation Oncology, LLC v. Queen’s*  
17 *Medical Ctr.*, 810 F.3d 631, 636 (9th Cir. 2015). According to the motion, prison  
18 officials refuse to classify Aguilar as a general population inmate “under false  
19 allegations stating that he is in administrative segregation [due] to an (STG) gang  
20 member.” (ECF No. 4 at 2). But the complaint does not contend that Aguilar’s  
21 classification status or housing conditions are unlawful. Rather, the complaint  
22 contends that several corrections officers used excessive force against him, and  
23 the senior officer purposefully delayed Aguilar receiving medical care for injuries  
24 that he suffered in the incident. (ECF No. 8). The Court therefore denies Aguilar’s  
25 motion for a temporary restraining order and a preliminary injunction.

26 / / /

27 / / /

28 / / /

1     **II.     CONCLUSION**

2             For the foregoing reasons, IT IS HEREBY ORDERED that:

3             1.     Aguilar's application to proceed *in forma pauperis* (ECF No. 1) is  
4     granted. Aguilar is not required to pay an initial installment of the filing fee. And  
5     Aguilar is permitted to maintain this action to conclusion without prepaying any  
6     additional fees or costs or giving security for them.

7             2.     To ensure that Aguilar pays the full filing fee, the Nevada Department  
8     of Corrections will forward payments from the account of **DAVID AGUILAR,**  
9     **#52801** to the Clerk of the United States District Court, District of Nevada, 20%  
10    of the preceding month's deposits (in months that the account exceeds \$10) until  
11    the full \$350 filing fee has been paid for this action.

12            3.     Aguilar's motion for appointment of counsel (ECF No. 1-3) is granted  
13    in part. This case is referred to the Pro Bono Counsel Program for the purpose of  
14    identifying counsel willing to be appointed as pro bono counsel for Aguilar. The  
15    scope of appointment will be for all litigation purposes through the conclusion of  
16    trial. By referring this case to the Pro Bono Counsel Program, the Court is not  
17    expressing an opinion about the merits of Aguilar's claims.

18            4.     This action is excluded from the Court's Inmate Early Mediation  
19    Program and proceeds onto the normal litigation track.

20            5.     The Court will hold a status conference in approximately 60 days to  
21    discuss whether the Court has identified counsel willing to be appointed as pro  
22    bono counsel and how to further proceed with this case. The Court will enter a  
23    separate order scheduling that conference.

24            6.     It is further ordered that Aguilar's motion for an order to show cause  
25    why a temporary restraining order and a preliminary injunction should not issue  
26    (ECF No. 4) is denied.

27            7.     Service under Federal Rule of Civil Procedure 4 must be perfected  
28    within 90 days from the entry date of this order.

1           8. To begin the process for perfecting service, subject to the findings of  
2 the screening order (ECF No. 6), within 21 days of the date of entry of this order,  
3 the Office of the Attorney General of the State of Nevada will file a notice advising  
4 the Court and Aguilar of (a) the names of the defendants for whom it accepts  
5 service; (b) the names of the defendants for whom it does not accept service, and  
6 (c) the names of the Defendants for whom it is filing the last-known-address  
7 information under seal. As to any named defendant for whom the Attorney  
8 General's Office cannot accept service, it will file, under seal, but will not serve  
9 the inmate Aguilar the last known address(es) of those defendant(s) for whom it  
10 has such information. If the last known address of the defendant(s) is a post office  
11 box, the Attorney General's Office will attempt to obtain and provide the last  
12 known physical address(es).

13           9. If service cannot be accepted for any of the named defendant(s), the  
14 Court will address the matter at the status conference.

15           10. If the Attorney General's Office accepts service of process for any  
16 named defendant(s), such defendant(s) will file and serve an answer or other  
17 response to the complaint (ECF No. 7) within 60 days from the date of this order.

18           11. Aguilar will serve upon defendant(s) or, if an appearance has been  
19 entered by counsel, upon their attorney(s), a copy of every pleading, motion or  
20 other document submitted for the Court's consideration. If Aguilar electronically  
21 files a document with the Court's electronic-filing system, no certificate of service  
22 is required. Fed. R. Civ. P. 5(d)(1)(B); Nev. Loc. R. IC 4-1(b); Nev. Loc. R. 5-1. But  
23 if Aguilar mails the document to the Court, Aguilar will include with it a certificate  
24 stating the date that a true and correct copy of the document was mailed to the  
25 defendants or their counsel. If counsel has entered a notice of appearance for any  
26 defendant, Aguilar will direct service to the individual attorney named in the  
27 notice of appearance, at the physical or electronic address stated therein. The  
28 Court may disregard any document received by a district judge or magistrate

1 judge that has not been filed with the Clerk, and any document received by a  
2 district judge, magistrate judge, or the Clerk that fails to include a certificate  
3 showing proper service when required.

4 12. The Clerk of the Court is directed to add the Nevada Department of  
5 Corrections to the docket as an Interested Party and electronically serve copies  
6 of this order, the screening order, the complaint, and Aguilar's notice to appoint  
7 pro bono counsel (ECF Nos. 6, 7, 8) on the Office of the Attorney General of the  
8 State of Nevada by Adding the Attorney General of the State of Nevada to the  
9 Interested Party on the docket. This does not indicate acceptance of service.

10 13. The Clerk of the Court is further directed to send copies of this order  
11 to (1) the Pro Bono Liaison, (2) the Finance Division of the Clerk's Office, and  
12 (3) the Chief of Inmate Services for the Nevada Department of Corrections at  
13 formapauperis@doc.nv.gov.

14 Dated this 17<sup>th</sup> day of January 2024.

15  
16  
17 

18 ANNE R. TRAUM  
19 UNITED STATES DISTRICT JUDGE  
20  
21  
22  
23  
24  
25  
26  
27  
28